NO. 82-1127

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

HELICOPTEROS NACIONALES
DE COLUMBIA, S.A.,
Petitioner

v.

ELIZABETH HALL, et al.,
Respondents

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Respondents, being dissatisfied with the presentation of Petitioner, submit the following:

1. Were the contacts and business activities of the non-resident defendant in Texas of such nature, extent and substance to justify the assertion of in personam jurisdiction by the Supreme Court of Texas?

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INTRODUCTION

Respondents request this Court to deny the Petition for Writ of Certiorari filed herein by Petitioner.

OPINION BELOW

The final opinion, concurring opinion and dissenting opinion are reported at 638 S.W.2d 870 (Tex. 1982) and are reproduced in Petitioner's Appendix, 1a.

JURISDICTION

Jurisdictional requirements are adequately set forth in Petition, p. 2.

CONSTITUTIONAL PROVISION INVOLVED

It is Respondents' contention that the only constitutional provision involved is the due process clause of the Fourteenth Amendment which is set forth in the Petition, p. 2.

STATEMENT OF THE CASE

The facts material to the question presented appear in the final opinion of the Supreme Court of Texas, Petitioner's Appendix 1A.

In Petitioner's statement of the case these inaccuracies should be noted:

A. Williams-Sedco-Horn, decedents' employer, was not headquartered in Oklahoma, but in Houston, Texas.

B. The statement that Helicol's officer had preliminary discussions in Houston, Texas about the contract is incorrect. The contract provisions were finalized and agreed upon at this meeting.

SUMMARY OF ARGUMENT

Sufficient evidence and reasonable inferences thereon support the conclusions of the Texas Supreme Court that Petitioner was amenable to jurisdiction.

ARGUMENT

I.

Petitioner asserts that the non-resident's sole contacts wtih the State of Texas involved equipment purchases and a single contract discussion with decedents' employer in Texas. That assertion is simply not factually accurate. The Texas Supreme Court found the facts to be:

1. The contract which brought Respondents' decedents and Petitioner together was negotiated in Houston, Texas between Helicol and decedents' employer, Williams-Sedco-Horn.
2. Helicol purchased substantially all of its helicopter fleet in Fort Worth, Texas.
3. It did approximately $4,000,000 worth of business in Fort Worth, Texas, from 1970 through 1976 as purchaser of equipment, parts and services. This consisted of spending an average of $50,000 per month with Bell Helicopter Company, a Texas corporation.
4. It negotiated in Houston, Harris County, Texas, with a Texas resident, which negotiation resulted in the contract to provide the helicopter service involving the crash leading to this cause of action (previously mentioned) and wherein Helicol agreed to obtain liability insurance payable in American dollars to cover a claim such as this.
5. It sent pilots to Fort Worth, Texas to pick up helicopters as they were purchased from Bell Helicopter and fly them from Fort Worth to Colombia.
6. It sent maintenance personnel and pilots to Texas to be trained.

7. It had employees in Texas on a year-round rotation basis.
8. It received roughly $5,000,000 under the terms and provisions of the contract in question here which payments were made from First City National Bank in Houston, Texas; and
9. It directed the First City National Bank of Houston, Texas to make payments to Rocky Mountain Helicopters pursuant to the contract in question. (Involved leasing of a large helicopter capable of moving heavier loads for Williams-Sedco-Horn).

The Supreme Court then concluded that ". . . Helicol's numerous and substantial contacts do constitute 'doing business' in this state . . ." (Petitioner's App. p. 7a)

The concurring opinion properly adds to the factors just mentioned these matters:

1. They (Helicol) directly secure the services of the Texas markets.
2. Maintain employees on a year-round basis and 26 times sent officials of their company to Texas.
3. In this multi-million dollar business in Texas, Helicol has availed itself of the privilege and benefits of Texas law.
4. Helicol's numerous and purposeful activities in and contact with Texas were grounded on the expectation, or necessity, of invoking the benefits and protection of Texas law.

It appears that the Texas Supreme Court, the dissenting judges and petitioner are all in agreement that the United States Supreme Court has laid down certain basic principles:

1. Where a non-resident defendant's activities in the forum state are substantial and continuous, jurisdiction is permissible even if the cause of action arises from activities entirely distinct from its activities in the forum. *Perkins v. Benquet Consolidated Mining Co.*, 342 U.S. 437 (1952); *International Shoe Company v. Washington*, 326 U.S. 310 (1945).
2. Where a non-resident defendant's activities in the forum state are incidental, transitory and infrequent, jurisdiction is permissible if such activity gives rise to the cause of action. *International Shoe Company v. Washington*, 326 U.S. 310 (1945).
3. Where a non-resident defendant has no contacts, ties, or relations, the fact that the cause of action arises in the forum state does not permit assumption of jurisdiction. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 282 (1980).

Obviously, each case must turn upon its own facts. The Texas Supreme Court fully considered and correctly decided the issues in this case by a proper application of the law to the facts.

The facts demonstrated to the satisfaction of the Texas Supreme Court that Petitioner was doing business in Texas; so numerous, substantial and continuous were its activities there.

The evidence demonstrates that Petitioner injected itself into the business community of Texas and purposefully availed itself of the privilege of conducting activities there. *Hanson v. Denkla*, 357 U.S. 235, 253 (1958), and that it had enough clear notice that it was subject to suit there that it agreed to protect itself by procuring liability

insurance payable in American dollars. *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286 (1980).

The Texas Supreme Court's opinion is in harmony with the three United States Supreme Court's decisions cited above.

II.

The decision of the Texas Supreme Court in no manner conflicts with *Rosenberg Brothers & Co. v. Curtis Brown Co.,* 260 U.S. 516 (1923).

The two cases are, indeed, factually dissimilar. On the one hand, the only contact with the forum state was the purchase of goods—on the other—systematic, prolonged, substantial business dealings were conducted in the forum state which included purchases.

It is difficult to conceive that this case, being nothing more than a factual dispute, could have any effect on other litigants, much less international trade.

If an alien corporation wishes to protect itself against the assertion of jurisdiction, it need only limit its activities to mere purchases. However, having significantly entered the business community of a state as determined by the quality, substantiality, continuity and systematic nature of its activities it should expect to be subject to the jurisdiction of such state. *Seymour v. Parke, Davis & Co.,* 423 F.2d 584, 587 (1st Cir. 1970).

Helicol freely injected itself into the system of commerce in Texas. Having done so, it should "reasonably anticipate being haled into court there". *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 282, 297 (1980).

III.

This case and the two cited by Petitioner are virtual opposites from a factual standpoint.

Conn v. Whitmore, 342 P.2d 871 (Utah 1959) involved a single transaction between a Utah resident and an Illinois resident—the purchase of a horse. The law applied by that court is in total accord with that applied by the Texas Supreme Court.

Marshall Egg Transport Co. v. Bender-Goodman Co., 148 N.W.2d 161 (Minn. 1967) was a suit on breach of contract for the purchase of a load of eggs.

Jurisdiction was sought under that state's single act statute.

Its only similarity to this case is that a question of jurisdiction was involved.

IV.

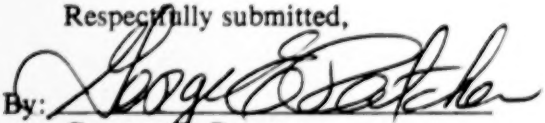
Petitioner asserts that a different test of due process under the Fourteenth Amendment was applied since Petitioner was an "alien corporation". Again, Petitioner is inaccurate. It attempts to utilize the language of a discarded and abandoned sentence in the concurring opinion. The opinion correctly holds that due process must be universal in its application.

In proper context the concurring opinion was simply reiterating this Court's holding in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 282 (1980) concerning the importance of preserving the system of interstate federalism and that such was not a consideration when another country, rather than a co-equal sovereign state, is involved.

CONCLUSION

For these reasons the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

By: 

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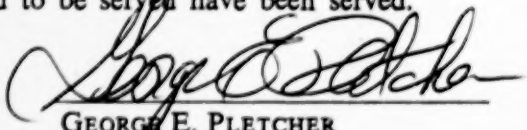
CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of January, 1983 three copies of this Brief of Respondents in Opposition to Petition For A Writ of Certiorari were mailed, by first class mail, postage prepaid, to Hon. Thomas J. Whalen, 1030 15th St., N. W., Suite 720, Washington, D.C. 20005, counsel for Petitioner. I further certify that all parties required to be served have been served.



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